IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21233 of 2004

Between:

K.Bhavannarayana,S/oVenkayya,
R/o Taraknadh Colony, Anantapur, Ananthapur District

..... PETITIONER

AND

1 The Vice Chairman and Managing Director of A.P.Scheduled Caste Cooperative Finance Corporation Limited, Hyderabad
2 The District Collector and Chairman, P.D.S.C.C.S.Ltd. Ongole

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ, Order or direction more in the nature of Mandamus or any other appropriate Writ declaring the proceedings in Rc.no.E1/2/AE/2004, dated 9-11-2004 of the 2nd respondent in placing the petitioner under suspension is quite arbitrary, illegal and without jurisdiction and consequently to set aside the same with all consequential benefits and pass appropriate orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.K.ANANDA RAO

Counsel for the Respondent No.2: MR.M.V.SURESH KUMAR

The Court made the following :

ORAL ORDER:

The petitioner has filed this writ petition challenging the proceedings, dated 10.5.1986 of the District Collector & President of the District Scheduled Caste Service Cooperative Society Limited, Guntur and the order, dated 9.11.2004 passed by the 2nd respondent.

The case of the petitioner is that the District Employment Exchange, Guntur sponsored his name for appointment to the posts of Supervisors in the engineering wing of the District Scheduled Castes Service Cooperative Society Limited, Guntur (for brevity "D.S.C.S.C.S.L"). The Selection Committee approved the list of candidates for appointment as Supervisors under Work Experience Programme. In the selection list, the petitioner's name was shown at serial number 8. The District Collector issued appointment order, dated 10.5.1986. The Superintending Engineer, A.P. Scheduled Caste Cooperative Finance Corporation (for short "A.P.S.C.C.F.C."), Guntur, submitted proposals for reallocation of 21 Assistant Engineers including the petitioner working excessively in Guntur to other District Scheduled Caste Societies Engineering Wings. Thereafter, the Managing Director of A.P. Scheduled Caste Cooperative Finance Corporation Limited (for short "A.P.S.C.C.F.C.L."), Hyderabad, affected the transfers in posting the candidates in the clear existing vacancies with regular pay scales vide Proceedings, dated 20.2.1998. As per the said proceedings, the petitioner was posted as Assistant Engineer to the District Society Engineering Wing in Nellore District. Due to non-availability of clear vacancies in the posts of Assistant Engineers, he was transferred from place to place at the instance of the superiors. On 1.5.2004, the petitioner was relieved from his parent department and asked to join

as Assistant Engineer in the office of the Deputy Executive Engineer, A.P. State Police Housing Corporation Limited, Ananthapur. Accordingly, on 4.5.2004, he reported for duty. The 2nd respondent issued the impugned proceedings, dated 9.11.2004 placing the petitioner under suspension on the ground of certain irregularities said to have been taken place during their inspection of works which were executed under Food for Work Programme in Giddalur Mandal of Prakasam District. The grounds of the impugned proceedings are, at the time of the petitioner's appointment, there were no service regulations in the Corporation, but in the year 2000, the service regulations relating to the Engineering Wing of A.P.S.C.C.F.C.L were framed and approved and they came into force from 2000 onwards. As per the said regulations, the constitution of technical staff of Engineering Wing is classified and the Assistant Engineer is classified under Class-III and the appointing authority is the Managing Director of the Corporation. The petitioner was relieved on 30.4.2004 from the office of the Deputy Executive Engineer (M), Anantapur so as to enable him to join A.P. State Police Housing Corporation Limited, Ananthapur. The Vice Chairman and Managing Director of the Corporation is the competent authority for making appointments and taking disciplinary action against the Assistant Engineers and therefore, the 2nd respondent has no jurisdiction to place him under suspension. According to him, the work at Giddalur was already completed by the Assistant Engineer. At the time of his joining, the work remained was only to record the measurements in measurement book. Hence, the writ petition has been filed.

The 2nd respondent filed a counter affidavit stating that the D.S.C.C.S.L, Ongole was constituted and registered under the A.P. Cooperative Societies Act. The society has its own bye-laws. The 1st respondent-Corporation was also constituted and registered under A.P. Cooperative Societies Act. As per the bye-laws of the District Society, the District Collector is the ex-officio President of the District Scheduled Caste Service Corporation Limited, Ongole. The main object of the society is to evolve scheme for the upliftment of the

schedule caste beneficiaries. In the year 1984-85, the District Societies have undertaken large number of economic development programmes for scheduled caste people including the construction of shopping complex and other developmental works. In order to implement the construction work undertaken by the District Societies, the Government issued G.O.Ms.No.200, dated 12.9.1985 creating Engineering Wings in the District temporarily. The Government also set out staffing pattern in the said Government Order. As per the said Government Order, the District Collector is the appointing authority for the staff in the engineering wing. The 1st respondent-corporation was authorised to release the funds to the District Societies. The Government issued a Memo No.267/SCP-II/85-93, dated 12.9.1985 authorising the District Collector to appoint Engineering staff to implement and supervise the work. The District Collector, by his Proceedings, dated 10.5.1986, initially appointed the petitioner as Supervisor. The 1st respondent-corporation, by its proceedings, dated 20.2.1988, reallocated the Assistant Engineers excessively recruited in other District Societies and therefore, the petitioner herein was allotted to the Engineering Wing, Nellore. As the Engineering Wings were running under minus balances and the staff working in Engineering Wings was not paid salaries, the District Collector sent the staff of the Engineering Wing to other departments. The petitioner herein was deputed to M.P.D.O. Office, Giddalaru to work under Food for Work Programme in Giddalur Mandal vide proceedings, dated 26.4.2002. The District Society received report on 24.8.2004 from the General Administration (Vigilance and Enforcement) Department stating about the misappropriation of rice. After enquiry, the petitioner was placed under suspension. As per the service rules of the 1st respondent-Corporation, the direct recruitment to the post of Assistant Engineer was only to the extent of regularising services of the person working as Assistant Engineer and there will not be any further recruitment except appointments on contract basis. As per the service rules, the Managing Director of the 1st respondent-corporation will have overall administrative control over technical

employees working in the Engineering Wing and the Chairman of the District Society will exercise powers over the employees working in the respective Districts. Therefore, the contention of the petitioner that the 1st respondent has no jurisdiction is not tenable. Hence, the 2nd respondent prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for the 2nd respondent and perused the material on record.

The learned counsel for the petitioner has contended that as per the rules of the 1st respondent-Corporation, the Managing Director is the competent authority to place an employee under suspension and the petitioner is classified as Assistant Engineer in Class-III and the District Collector has no authority to suspend an employee and therefore, the impugned order suffers from an error of jurisdiction. Hence, the counsel prays to quash the impugned order, dated 9.11.2004.

On the other hand, the learned Government Pleader for the 2nd respondent has contended that the District Collector made the initial appointment. The petitioner and some others were deputed to work at other departments as the staff working in the engineering wings were not being paid salaries, therefore, the 2nd respondent is the appointing authority and he has got jurisdiction to place an employee under suspension. Hence, he prays to dismiss the writ petition.

Though some other points have been taken in the writ petition with regard to the work that has been completed at the time of petitioner's joining at Giddalur, the work remains is to record the measurements in the measurement book. This is a question of fact which has to be decided in the enquiry. As seen from the impugned proceedings, dated 9.11.2004, the petitioner and two other officers are responsible for misuse of 63.666 Metric Tonnes of rice worth about Rs.3,59,712.90. Therefore, considering the said fact, the 2nd respondent placed the petitioner under suspension pending enquiry.

Normally this Court will not interfere with the suspension order pending enquiry unless the jurisdiction of the authority, who placed the officer under suspension is under challenge. It is a fact that a Selection Committee initially appointed the petitioner, that is to say, the District Collector and President of District Schedule Caste Cooperative Societies Limited, Guntur, appointed the petitioner as Supervisor, vide Proceedings R.c.No.3286/86-SC-II, dated 10.5.1986. As per bye-laws, it is not in dispute that the District Collector is the ex-officio President of the District Scheduled Castes Service Cooperative Society Limited. In pursuance of the proposal of the Superintending Engineer, A.P. Scheduled Castes Cooperative Finance Corporation Limited, the 1st respondent effected postings and transfers by its proceedings, dated 20.8.1988, wherein the petitioner has been allotted to the District Society Engineering Wing, Nellore. By proceedings, dated 28.8.1998, the District Collector, Prakasam surrendered the writ petitioner to the Managing Director, A.P. Scheduled Castes Cooperative Finance Corporation Limited, as excess staff. In the said order, it is made clear that their posts are purely temporary and there will not be any liability on the part of the District Society either by Court or by the Appellate Tribunal to absorb them permanently and the candidate should abide by the rules and conditions which are already prescribed by the District Societies, Guntur at the time of their first recruitment. Thereafter, the Collector has directed the writ petitioner and some other engineers to proceed to the Mandal Development Offices of Darsi and Giddalur and report for duty to look after the works of the Food for Work Programme. Accordingly, the petitioner was relieved on 24.9.2002. On 23.4.2004, the petitioner's services were deputed to the A.P. State Police Housing Corporation Limited.

Therefore, from the above facts, it is clear that the writ petitioner was either transferred or deputed to the other departments. No proceedings have been filed to show that he was permanently absorbed in the 1st respondent-Corporation. The Government, as per

G.O.Ms.No.200 Social Welfare (SCP.II), dated 12.9.1985, created 23 divisions and 46 sub-divisions in the State. After issuance of the Government Order, most of the Districts have appointed technical staff at the district level. The need of the Corporation may change from time to time requiring additional manpower or reducing manpower. The service rules have been framed namely A.P. Scheduled Castes Finance Corporation and District Scheduled Castes Services Cooperative Societies Engineering Service Rules. These rules will be applicable only to the employees appointed against the sanctioned strength in various sub-divisions. As per these rules, the direct recruitment to the posts of Assistant Engineers is to the extent of regularizing the services of the persons working as Assistant Engineers and there will not be any further direct recruitment except for appointment on contract basis. The appointing authority for various categories of posts is the Managing Director in respect of Class-I and II Assistant Engineers. So, based on the Rule-4 of the Service Rules, the contention of the learned counsel for the petitioner is that when the Managing Director is the appointing authority, the Collector has no jurisdiction to place the petitioner under suspension. In the said rule, it is made clear that the Managing Director has overall administrative control over the technical employees working in the Engineering Wing of the Scheduled Caste Societies in the State while Chairman of the District Societies will exercise powers over the employees working in the districts. In these rules, the Managing Director is shown as the appointing authority in respect of Class-I and Class-II Assistant Engineers in the matter of recruitment to the post of Assistant Engineer to the extent of regularising the services of the persons working as Assistant Engineers. If the Managing Director regularizes the services of the petitioner, then the Managing Director would be the appointing authority. No proceedings are issued by the Managing Director of the 1st respondent regularising the services of the petitioner as Assistant Engineer in terms of the rules of A.P. Scheduled Castes Finance Corporation and District Scheduled Castes Service Cooperative Societies Engineering Service Rules. Therefore, the contention of the

writ petitioner cannot be accepted and it is wholly untenable and devoid of merit. In the present case, the 2nd respondent appointed the petitioner as Assistant Engineer and inasmuch as the Chairman of the District Societies would exercise the powers over the employees working in the Districts, the 2nd respondent is the competent authority to place an employee appointed by the District Collector under suspension. The Managing Director of the Corporation can only be an appointing authority in case he regularises the services of the persons working as Assistant Engineers. No doubt sub-clause(iii) of Rule-12 of A.P. Scheduled Castes Finance Corporation and District Scheduled Castes Service Cooperative Societies provides thus:

> *"The appointing authority may terminate the services of an employee on the grounds of unsatisfactory record, continued failure in discharge of duty and on satisfaction of lack of utility of the employee to the organization by giving 3 months notice or salary in lieu of."*

But, the said provision comes into play when the services of an Assistant Engineer are regularised by the Managing Director. As long as the services of the petitioner are not regularised by the Managing Director of the 1st respondent-Corporation, the 2nd respondent continues to be the appointing authority. Therefore, the 2nd respondent has got jurisdiction to place an employee under suspension.

Having regard to the facts and circumstances of the case, I am of the considered view that the impugned order, dated 9.11.2004 does not suffer from any jurisdictional error warranting interference by this Court and this writ petition is devoid of merits.

The writ petition is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

20th December, 2004

bcj

To

1 The Vice Chairman and Managing Director of A.P.Scheduled Caste Cooperative Finance Corporation Limited, Hyderabad
2 The District Collector and Chairman, P.D.S.C.C.S.Ltd. Ongole

3 Two C.D. copies